

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Appellant,

v.

LUIS PEREZ,

Defendant and Respondent.

G035139

(Super. Ct. No. 04SF0812)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Gary S. Paer, Judge. Reversed.

Tony Rackauckas, District Attorney and Brian F. Fitzpatrick, Deputy District Attorney for Plaintiff and Appellant.

Richard Schwartzberg, under appointment by the Court of Appeal, for Defendant and Appellant.

*

*

*

The People appeal from the trial court's pretrial order dismissing criminal charges against Defendant Luis Perez pursuant to Penal Code section 1385 after granting defendant's motion to suppress evidence (Pen. Code, § 1538.5). (Pen. Code, § 1238,

subd. (a)(7); all further statutory references are to the Penal Code unless otherwise stated.) For reasons explained below, we reverse the court's order.

I

FACTS AND PROCEDURAL HISTORY

Orange County Sheriff's Deputy Lavinia Vega and her partner, Deputy Danks, were patrolling an area of Laguna Niguel when they noticed a Dodge pickup truck with an obstructed license plate. Vega activated the overhead lights of her patrol car and followed the truck into a motel parking lot. After the vehicles stopped, Vega exited her patrol car and contacted the driver of the truck, Gilbert Martinez. Martinez produced his driver's license, pointed to defendant and a woman, and said, "I'm here with them" or "I'm here to pick them up." Vega had seen defendant and the woman as she entered the motel parking lot. At that time, she saw defendant bending into the open driver's door of a Chevrolet Camaro parked two cars away from where Martinez parked his truck. Vega handed Martinez's driver's license to Danks, who ran a records check and quickly determined Martinez had an outstanding warrant. Danks placed Martinez in the back of the patrol car while Vega shifted her attention to defendant and the woman.

When Martinez had pointed at them, Vega noticed they had started to walk either toward her or in the direction of the motel stairway. They were about two to three feet away from Vega when she asked them if they knew Martinez. Defendant said his car had broken down and Martinez was there to give them a ride. Vega asked, "if anybody was on probation or parole." She received negative responses from defendant and the woman. She asked if they had ever been arrested. Vega testified, "The female said 'no' and [defendant] said 'yes.'" Defendant stated the arrest occurred four months earlier.

Vega asked defendant if the Camaro belonged to him and he stated that it did. About this time, Vega noticed "the female and [defendant] were nervous and fidgety, had rapid speech. Their eyes were dilated." Vega acknowledged it was dark at the time, but she stated the stop occurred in a lighted underground parking structure.

Vega testified, "I asked Deputy Danks to look at their eyes because I believed that they were under the influence of some kind of narcotic." Danks complied and asked defendant and the woman if they had taken any drugs. They replied that they had taken Vicodin as prescribed by their physician following an automobile accident. Based on training from drug recognition experts, Vega knew Vicodin constricts rather than dilates the pupils. Vega decided, based on her training and two-year patrol experience, defendant's dilated pupils, nervousness, fidgety behavior and rapid speech indicated he was under the influence of methamphetamine. However, she did not believe she had sufficient evidence to place him under arrest.

Vega asked defendant and the woman for identification. The woman told Vega her identification was in their motel room. Defendant responded that his identification was in his car. Vega asked if she could retrieve defendant's identification from the car and he said, "No. [¶] . . . [¶] The car's not mine. It's my brother's." Vega repeated her question and defendant stated, "No, car's not mine." Vega told defendant she had seen him reach into the car when she drove up, but he denied that he had done so. Vega asked defendant if he had the keys to the car and he replied, "No." At this point, Vega testified, "[Defendant] was becoming agitated and given all the circumstances I told him that I was going to put him in the back of my patrol car 'till I figured out what was going on."

Vega told defendant she wanted to conduct a patdown search for her safety. Defendant told Vega he had keys in his front pants pocket. He retrieved a set of keys and handed them to her. She asked what the keys operated and defendant replied that he did not know. Vega accused defendant of lying, put him in the back of the patrol car, and walked over to the Camaro. She reached into the Camaro, put the keys in its ignition, and tried to start the engine. The key turned in the ignition but did not start the car. Vega testified she was trying to determine whether the car was stolen. She also testified she entered the car to obtain defendant's identification. She removed a black backpack from

the driver's seat and placed it on the ground. When Vega glanced inside a partially-opened zippered compartment of the backpack, she thought she saw "a plastic baggy containing . . . methamphetamine." After showing the baggy to her partner, Vega continued her search of the backpack and found "another pound of methamphetamine and a loaded automatic weapon." At this point narcotics officers were called to take over the investigation.

Defendant filed a pretrial motion to suppress evidence challenging the legality of his detention. Following a hearing at which Vega was the sole witness, the trial court concluded defendant had been legally detained but that Vega's attempt to start the Camaro exceeded the scope of a lawful investigative detention. The court stated, "Then [defendant] was patted down for weapons and the defendant was placed in the back of the patrol car. During this detention, apparently, he exhibited symptoms of being under the influence. And then the officer approaches the Camaro, which is in a separate location, and reaches in and attempts [to] start the car with the keys. [¶] And, you know, to me, that is significant because if the sole purpose was to go to this car and search for I. D., why is she so interested in whether the car starts? That goes to her credibility. She goes to the car and attempts to start it. [¶] I got the impression that her goal was to figure out whether that car was stolen or whether that car was subject of an unlawful taking. That was her focus. Then once she figures out this issue with the ignition, she then gets into the car. She enters the car. Inside the car is a zipped-up backpack. She then grabs the backpack, makes another intrusion, opens up the backpack, and lo and behold, there are the drugs. [¶] Okay. So the real issue is how far can law enforcement go when they are attempting to find I. D.? That is the sole issue."

II

DISCUSSION

The People argue Vega's search of defendant's backpack was a permissible extension of the principles announced in *Terry v. Ohio* (1968) 392 U.S. 1. "In reviewing

defendant's [] section 1538.5 motion, we are bound by the trial court's factual findings, whether express or implied, if they are supported by substantial evidence. However, we review questions of law independently to determine whether the challenged search or seizure meets constitutional standards of reasonableness. [Citations.] Since the adoption of Proposition 8 in 1982, unlawfully obtained relevant evidence is properly excluded only if the United States Constitution requires exclusion. [Citation.]" (*People v. Ritter* (1997) 54 Cal.App.4th 274, 278.)

The trial court's factual findings are undisputed with one exception — defendant contends the court found Vega entered the car solely to investigate a crime. However, Vega testified she entered the car with the intent to determine if the car was stolen *and* to obtain proof of defendant's identity. The record reflects the court believed her predominant purpose was the investigation of a crime, but it also reflects the court believed she sought to obtain proof of defendant's identification and the court's dual purpose finding is supported by substantial evidence.

On appeal, defendant concedes the legality of his detention, but argues Vega could not legally enter the Camaro to obtain his identity or to investigate a crime. In resolving the issue, the trial court focused on Vega's subjective intent in entering the Camaro. However, whether a Fourth Amendment violation has occurred depends on an objective assessment of the officer's actions in light of the surrounding facts and circumstances, and not on the officer's subjective state of mind. (*People v. Miranda* (1993) 17 Cal.App.4th 917, 923-924.) "[T]he fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification of the officer's action does not invalidate the action as long as the circumstances, viewed objectively, justify that action." (*Scott v. United States* (1978) 436 U.S. 128, 138.)

Brief investigative detentions do not run afoul of the Fourth Amendment. "Although police officers may not arrest or search a suspect without probable cause and an exception to the warrant requirement, they may temporarily detain a suspect based

only on a 'reasonable suspicion' that the suspect has committed or is about to commit a crime. [Citations.]" (*People v. Bennett* (1998) 17 Cal.4th 373, 386-387.) Investigatory detentions are permitted under the Fourth Amendment, so long as the investigating officer "can point to specific articulable facts that, considered in light of the totality of the circumstances, provide some objective manifestation that the person detained may be involved in criminal activity." (*People v. Souza* (1994) 9 Cal.4th 224, 231.) In determining whether a detention is legal, reviewing courts consider the totality of the circumstances. (*Id.* at p. 230.) Facts that come to light during a detention may provide reasonable justification to prolong the detention. (*People v. Burnett* (1980) 107 Cal.App.3d 795, 800-801[observations after initial detention supported additional period of detention to allow officer to investigate his rational suspicion of criminal activity].)

Vega had ample justification to stop and question defendant. She and Danks initiated a legal traffic stop and followed Martinez into the motel parking lot. Martinez first pointed at defendant, then told the officers he knew defendant and had intended to give him a ride. Vega's first question to defendant was an effort to determine if Martinez was being truthful. In short order, Danks discovered Martinez had an outstanding warrant. By this time, Vega, who stood two to three feet away from defendant noticed behavior she associated with being under the influence of drugs. She asked if the Camaro defendant appeared connected to in fact belonged to him and he said yes. Vega attempted to obtain defendant's identification, but was told it was in the car. When she asked for permission to look for defendant's identification in the car, he said no and explained that the car did not belong to him. Defendant had a set of car keys in his pants pocket, but he claimed he did not know what the keys operated. Put simply, defendant became less cooperative and more agitated during the detention thus heightening Vega's suspicions. These facts considered together are sufficient to support Vega's suspicion defendant was involved in some criminal activity.

Defendant next contends Vega's decision to use the keys from defendant's pants pocket to try to start the Camaro instead of immediately searching the car for defendant's identification invalidates the search and seizure of his backpack. This assertion might have merit if Vega's subjective intent were the issue. However, as noted above, we must determine if her actions were objectively reasonable regardless of her subjective intent. There is no question Vega had the right to require defendant to produce identification and to pursue the matter if refused. (*People v. Long* (1987) 189 Cal.App.3d 77, 87 (*Long*).)

In *Long, supra*, 189 Cal.App.3d 77, the defendant, who appeared to be under the influence during police questioning on another matter, gave the investigating officer his name but stated he did not have proof of identification. The officer saw a bulge in the defendant's pants pocket that looked like a wallet. The officer again asked for identification and asked the defendant to look through his wallet. The defendant complied, but shielded the interior of the wallet from the officer's view. The officer grabbed defendant's arm and saw bindles of what looked like methamphetamine and identification papers. The appellate court concluded, "The voluntary display of identification is a routine experience for most of us. Measured against the obvious and substantial need for police recording the identity of a person suspected of having committed a crime, we find reasonable the minimal intrusion involved here in requiring the production of identification. In addition, defendant's oral statement of his name was suspect when he insisted he had no identification while appearing to carry a wallet and, in addition, he seemed intoxicated." (*Id.* at p. 88; see also *People v. Loudermilk* (1987) 195 Cal.App.3d 996, 1002 [a "suspect may not lie to the officer with impunity about his identity if there is a quick and minimally intrusive method of resolving the doubt."].)

Defendant attempts to distinguish his case by relying on the fact he never falsely identified himself and on Vega's subjective intent. As we have explained above, Vega's subjective intent alone does not invalidate the search. Nor are we persuaded

defendant's honesty prohibited Vega from entering the Camaro to ascertain proof of his identity. Defendant told Vega his identification was in the Camaro, but he would not consent to her retrieving it. We see no qualitative difference between reaching into a suspect's pants to retrieve a wallet (as in *People v. Loudermilk*, *supra*, 195 Cal.App.3d at p. 1002) and reaching into a suspect's car to in essence do the same thing. In fact, the latter is less intrusive because automobile drivers have a reduced expectation of privacy in their vehicle's contents. (*People v. Hart* (1999) 74 Cal.App.4th 479, 490.) Further, questions of officer safety are involved. (*Id.* at p. 489.) A suspect could have a weapon in the vehicle. It would be foolhardy to force an investigating officer to allow a recalcitrant suspect to retrieve identification from his or her own vehicle where a gun might be just as readily available.

In short, Vega's act of reaching into defendant's car was a reasonable extension of her investigation regardless of whether she first tested defendant's veracity by putting the key in the ignition, or first grabbed the backpack in search of his identification. The totality of the circumstances reasonably justified Vega's entry into the Camaro. She was not on a fishing expedition. Vega stated she wanted to know if defendant's keys operated the car he alternately claimed belong to him or someone else. Defendant's backpack was sitting partially open in the driver's seat and defendant claimed his identification was in the car. Considering defendant's demeanor, evasiveness, and conflicting responses to straight-forward questions, Vega's entry into the Camaro and seizure of the partially open backpack was reasonable.

III
DISPOSITION

The judgment is reversed.

MOORE, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

IKOLA, J.